IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1106 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

T K DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1106 of 1989

MR S TRIPATHY for Petitioners No. 1-13

M/S NJ MEHTA ASSO. for Petitioner No. 1

MR RM CHAUHAN A.G.P.for Respondent No. 1

FRESH NOTICE REQD(N) for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 27/12/2001

ORAL JUDGEMENT

1. The petitioners in this petition have sought

declaration from this Court that the conducting and assessment of HRQ examination held from 24.9.1988 to 27.9.1988 is illegal and contrary to law. The petitioners have further made prayer for quashing and setting aside the result of HRQ examination declared vide letter dated 29.12.1988 of respondent No.2. By way of alternative relief, the petitioners have sought direction against the respondent-authorities to reassess the answer papers and examinees taking into consideration the fact that certain papers contained questions not covered under the syllabus and, therefore, to grant full marks of those questions which were framed outside the syllabus. The petitioners have also sought ad-interim relief against respondent authorities restraining them from taking any action pursuant to the result of the examination in question.

2. This Court had issued rule on 16.9.91. However, no interim relief was granted in favour of the petitioners. When this matter was placed for hearing on 20.12.2001, Mr.Shalin Mehta, learned advocate for the petitioners has prayed for time as he was to take certain instructions in the matter. On that ground the time was granted and the matter was adjourned today i.e. 27.12.2001. The learned A.G.P. appearing for respondent No.1 is present and he relied on the affidavit-in-reply, which was filed long back i.e. on 14.8.1991. There was no affidavit-in-rejoinder filed on behalf of the petitioners. In the affidavit-in-reply, the respondent No.1 has opposed the petition on the ground that the petition is thoroughly misconceived and is not maintainable in law. An objection was also raised against filing of common petition by different petitioners for different causes of action. It was further submitted that the petitioners had appeared at Higher Revenue Qualifying Examination conducted by the Revenue Inspection Commissioner held in September, 1988 and result of the said examination was declared on 30.12.1988. It was further submitted that the petitioners were declared unsuccessful at the said examination and thereafter the present petition was filed making a grievance that the examination was not conducted properly and certain questions not covered under the syllabus were asked to the examinees. It was further submitted that by appearing at the examination and by not challenging the validity of the examination till declaration of the result, the petitioners have acquiesced in and, hence, the present petition was not maintainable. The respondent No.1 has further submitted in the affidavit-in-reply that the petitioners' grievance with regard to asking certain questions which were not

forming part of syllabus was discussed by the Government authorities with the leaders of the Association of the petitioners at Gandhinagar and ultimately, it was decided that ad-hoc special grace marks upto 50% of the so called out of course questions were assigned to every examinee though all questions were from the syllabus. It was further submitted that in pursuance of the said decision to grant grace marks, about 100 candidates were declared successful. The petitioners were given benefit of the said grace marks and yet they have not been declared successful.

3. It was further submitted on behalf of the respondent No.1 that previously the examination in question was taken by the G.P.S.C. and at that time, around 20% candidates used to get through the examination. As against this, during the examination held in September, 1988, about 30% of the candidates were declared successful and, therefore, according to the respondent No.1, the answer books were examined more leniently. It is further submitted that after the examination held in September, 1988, another examination was held in May, 1990 and in the said examination, the petitioners Nos.1,2,3,4, 8 and 12 were declared successful. Rest of the petitioners could not get through even at the examination held in May, 1990 and this fact by itself proves that these petitioners were not upto the marks and the averments pertaining to illegality of the examination etc., are not just and proper.

4. I have considered the pleadings and perused the documents of the authorities filed alongwith the petition as well as the documents filed alongwith the affidavit-in-reply. Looking to the facts and circumstances of the case and having regard to the contentions raised by the authorities, I am of the view that the petitioners are not entitled to seek relief which they have prayed for in the present petition. The petitioners Nos.1,2,3,4, 8 and 12 have already cleared the examination in May, 1990 and hence they are not interested in pursuing this matter. With regard to other petitioners also, after a lapse of more than 13 years it is not fit and proper to declare the said examination as illegal and contrary to law. There is no question of giving grace marks in the answer papers after expiry of period of more than 13 years. Even otherwise, the same were granted. It is also important to note that though the time was prayed specifically to take certain instructions from the petitioners, nothing is produced before this Court. In view of the above facts and

circumstances of the case, I do not find any substance and merit in the matter and hence the petition is dismissed. Rule is discharged with no order as to costs.

(K.A. Puj, J.)

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